

The Rejection of the Gender and Equal Opportunities Bill: A Blessing for Nigerians

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This article is written on behalf of the Foundation for African Cultural Heritage (FACH), and is inspired by the comments of Mrs. Oby Nwankwo of the National Coalition on Affirmative Action, made in an interview published in The Guardian on April 15th 2016, to the effect that existing law does not take care of the issues in the rejected Gender and Equal Opportunities Bill (GEO Bill); that the Bill does not have any section which legalises abortion; and that the Bill aims to correct cultures and traditions that subjugate women.

The GEO Bill incorporates certain aspects of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the African Union Protocol on the Rights of Women (Maputo Protocol); and the National Gender Policy. On March 14 2016 the Bill was rejected by the Senate.

FACH is of the view that the rejection of the Bill is a most fortunate event for the Federal Republic of Nigeria for the reasons set out below.

The Anti-gender Stereotyping Provisions Need to be Considered Carefully

Please note that the GEO Bill has an anti-gender stereotyping provision based on the CEDAW requirement for a change in the traditional role of men as well as the role of women in society and in the family, to achieve full equality between men and women. CEDAW seeks to do this by obliging state parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary, and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes; or on stereotyped roles for men and women.

On the website of the United Nations High Commission on Human Rights, 'Gender Stereotyping' is defined as:

*'the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the **social group** of women or men'.*

The United Nations (UN) seems to be implying that the terms 'man' and 'woman' connote social grouping, not physical attributes. Distinction between the sexes will then refer to 'male' and 'female', as a different thing entirely from man and woman. Therefore, apparently, in the eyes of the UN, you can be a male woman, or a female man. If this is the intendment of the UN, we must be very circumspect before incorporating its various treaties into our laws, using the language of the UN.

Furthermore, 'equality' of men and women should never be taken to mean 'sameness' of men and women. CEDAW seeks to establish the sameness of men and women; a distinction between 'sex' and 'gender'; and a freedom to choose your gender.

We are opposed to anti-gender stereotyping; and distinguishing gender from sex, and call on all Nigerians to adopt this standpoint. Faced with theories that consider gender identity as merely the cultural and social product of the interaction between the community and the individual, independent of personal sexual identity without any reference to the true meaning of sexuality, it is important to point out that every man and woman should acknowledge and accept his sexual identity. Physical, moral and spiritual differences and complementarities are oriented towards the goods of marriage (offspring, chaste fidelity, indissolubility), and the flourishing of family life. The harmony of the couple and of society depends in part on the way in which the complementarities, needs, and mutual support between the sexes are lived out. According to this perspective, it is obligatory that positive law be conformed to the natural law according to which sexual identity is indispensable because it is the objective condition for forming a couple in marriage (between a man and a woman).

A woman's work within the family today is the object of serious discrimination especially in Western countries, where one might add, it is becoming almost impossible for a woman to dedicate herself solely to the home. If society organizes itself solely on the criteria of economic productivity, motherhood will certainly be the victim. The social value of work in the home has been publicly proclaimed, but it has not yet received adequate legal recognition, at least with regard to economic remuneration. FACH however recognizes General Recommendation No 17 of the Committee on the Elimination of Discrimination Against Women, which provides that states should take steps to quantify and include the unremunerated domestic activities of women in the gross national product. This recommendation sadly, was not reflected in the GEO Bill.

The Reproductive Health and Family Planning Provisions need to be Considered Carefully

The CEDAW provisions on health are liable to moral abuse, and should therefore not be legislated without proper context.

This is demonstrated in General Recommendation No 24 of the Committee on the Elimination of Discrimination Against Women, which provides that states should prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended to remove punitive provisions imposed on women who undergo abortion. This is also provided for in the Maputo Protocol.

The GEO Bill as a result, has an abortion provision set out in Section 12(c) thereof. Please note that no human right to abortion exists because it contradicts the inherent human right to life. The human right to life is the basic human right: all others stem from it. Human life deserves respect in any circumstance. A life in a poor country or in a developing country must be as much respected as any other human life. Abortion is not a problem uniquely concerning women; it also involves men and society. A woman is condemned to isolation just at that moment of her life when she most needs solidarity. The irresponsibility of men, and often of society, is at the root of many abortions. This is what needs to be addressed, not the legalization of abortion.

Please note that the ideological imbalance present in the General recommendation 24 to the CEDAW is evident in that the document gives preference to sexually transmitted diseases or those which refer to reproduction. These represent only one part of women's health problems. Other diseases, such as tropical ones, which each year become more contagious, and cause more deaths than sexually transmitted diseases, are not given enough consideration.

Women's health should not be considered in a reproductive context only. When "seen through the lens of fertility control, the notion of health is distorted beyond all recognition" (The Lancet, 22 July 1995, p. 195). The general picture that emerges from the above three provisions is not representative of the interests and concrete needs of women.

There is reference to the threat of sexually transmitted diseases, but promiscuity is not discouraged in any way. Promiscuity and the discouragement thereof is a moral topic, but certainly it is also a medical topic, and an important element in the orientation of social policy.

Equality Between Men And Women: Most of the Provisions of the Bill are Superfluous

In Nigeria there already exists a robust legal framework, which covers the majority of the content of the GEO Bill. Chapter 2 of the 1999 Constitution provides that national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

We note that Chapter 2 of the Constitution is not justiciable, that is, you cannot enforce Chapter 2, it is merely a Federal Policy. Therefore it is good to have justiciable law that gives effect to Chapter 2. This has been done, as set out below. The below list is not exhaustive, please note.

- Section 34 of the 1999 Constitution provides that every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subject to torture or to inhuman or degrading treatment.
- Part 5 of the Criminal Code creates offences against the person and relating to marriage and parental rights and duties; and against the reputation of individuals.

- See the 2013 Court of Appeal case of *Eluwa v Eluwa* where the Court upheld the position that children of 'under ages' should, unless other facts and circumstances make it undesirable, be put in the care of the mother
- The Child Rights Act, sets out the specific conditions for a court order conferring parental responsibilities on a non-parent, implying that parental rights and responsibilities are automatically ascribed to the biological parents, subject to the conditions set out in the Child Rights Act.
- Sections 11(1)(b) and 18, of The Marriage Act which presuppose a widow's right to remarry, and in that event, to marry the person of her choice. The Standard Notice of Marriage form indicates the same thing.
- Section 42 of the 1999 Constitution (Freedom from discrimination) provides for the elimination of discrimination in political and public life, education, and employment, on grounds of marital status, and in the field of Health, and on socio-economic grounds.
- Regarding the right to choose indigenship and identity women have equal rights with men to confer their citizenship on their children. See Chapter 3 of the 1999 Constitution, which sets out how citizenship shall vest in a person
- Regarding Prohibition of Violence Against Women, see Sections 252 & 253 of the Criminal Code which defines and criminalises 'Assault'.

Furthermore, Customary Law practices can be overturned by statute or by a judgment of the courts (e.g. the Court of Appeal, or the Supreme Court). The courts will nullify any local custom or judgment (including rules against remarriage) that is repugnant to natural law, equity and good conscience. See the case of **Agbai v Okogbue (1991) 7 NWLR Pt 204**.

Many other customs have failed the repugnancy test at the Court of Appeal and the Supreme Court in relation to marriage to a dead person; paternity and custody of children; adultery; customary tort of disgrace, etc.

Finally, marriage rights, marriage and matrimonial causes are already covered by the Marriage Act; Matrimonial Causes Act; and the Child Rights Act. This is recognised in the GEO Bill.

All of the above legal provisions, and more which are in existence, do substantial justice to the overall intendment of the CEDAW and the Maputo Protocol.

In conclusion, what this article seeks to establish is that the GEO Bill is not good for Nigeria in that it ignores the best parts of its influencing sources, incorporates the most redundant parts, and includes insidious provisions which are liable to moral abuse.

We must be very careful about the gender stereotyping provisions, and health-related provisions. For the benefit of Nigerian women there should be focus on subject matters such as:

- Reduction in the overall poverty index of women;
- Strengthening the capacities of the Federal Ministry of industry Trade and Investment, and the Investment Promotion Council to support a gender sensitive trade regime;
- Establishing funds to support small and medium scale women entrepreneurs;
- Enhanced capacities for women entrepreneurs and producers;
- Better enforcement of existing laws; and
- Facilitating a strong ProBono legal practice area in Nigeria to ensure access to justice for rural women; and education of all women on the robust protections currently available to them under the law.

35% female participation in public service and employment opportunities; 50% educational opportunities for women; and the reservation for women of 35% of all other opportunities can be driven in the same manner that Broad-Based Black Economic Empowerment (BBEEE) is driven in the Republic of South Africa. Affirmative Action legislation like the South African BBEEE Act is what we need to see, not the proposed GEO Act.

Lagos